

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: Law of the Sea (06/07/1982-
06/08/1982)
Box: 9

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

To : Bill Barr
From : R. B. Keating

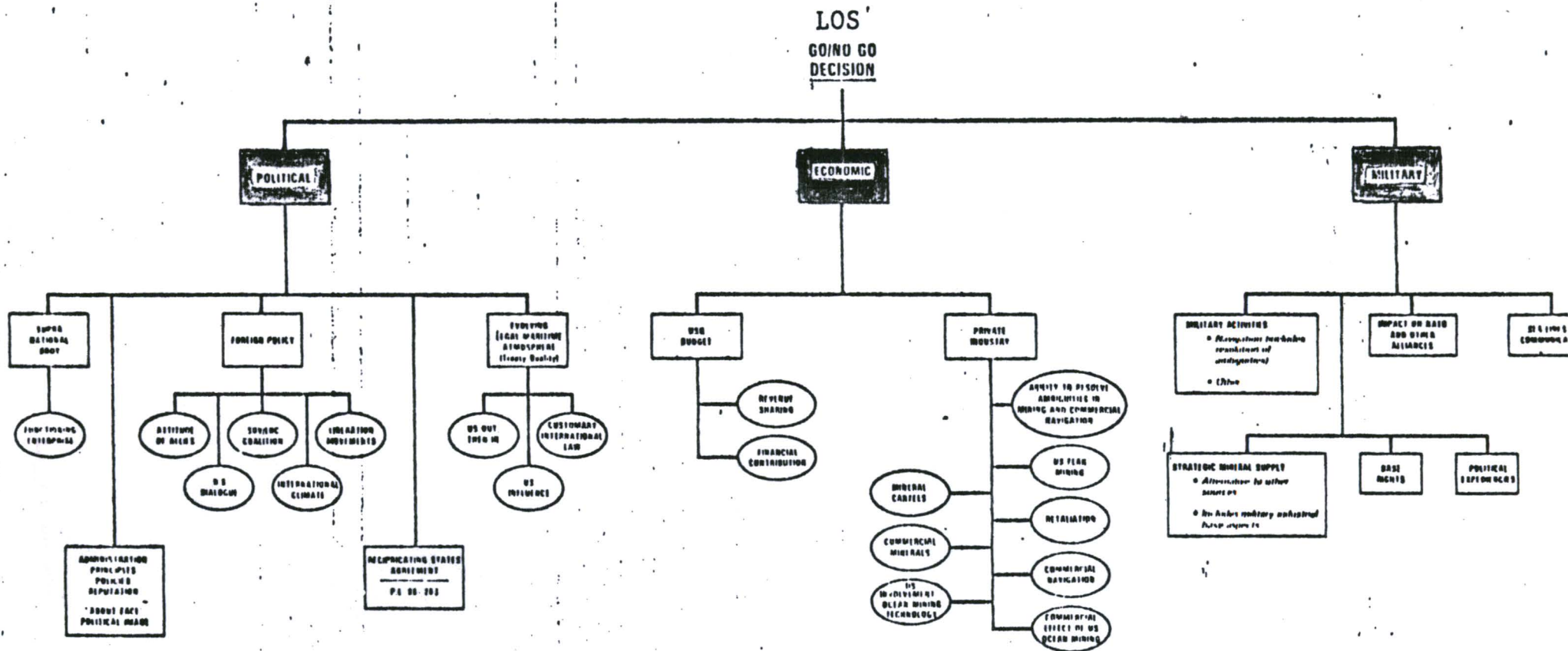
R.B. Keating-6/7/82

United States Oceans Policy Issues for the 1980's

- Access to Seabed minerals, when and if needed
- Control over Pollution in Coastal waters
- Control over fisheries in United States coastal waters
- Continuation of Tuna and Salmon fisheries positions
- Maintenance of freedom of navigation and overflight beyond the "12-mile limit"
- Maintenance of freedom of transit by military vessels and aircraft through current international straits
- Maintenance of freedom of transit and overflight of vessels and aircraft through "archipelagic" waters
- Maintenance of rights to the resources of the Continental Shelf of the United States **
- Freedom for scientific research beyond the limits of territorial waters, except for resource-related research on foreign continental shelves

Note: I have recommended that a high-level Government-industry task force be formed to develop details of strategy and tactics needed to establish a workable mini-treaty with other seabed mining countries, as an alternative to participation in the LOS treaty.

**Under Truman Declaration, Geneva Convention on the Continental Shelf, and the OCS Lands Act, as amended



Note: This decision-analysis, taking very few days of activity, would analyse the basic components and their interactions in the context of establishing a workable mini-treaty with other seabed mining companies.

R.B. Keating
LOS Policy Planning
6/7/82

6/8/82

Dear Bill,

1. I will have my comments on the Martica paper in your hands at 2 pm, today.
2. The I&G meeting this afternoon will be in Room 1107 at 2 pm.
3. Ted Krammiller just called me and said that we now have a very serious problem with "L" and is sending you a paper for your perusal.

Bob K.

file LOS

June 8, 1982

Note for Bill Barr

From: Bob Keating *BKK*

Re: Antarctic Minerals Regime

The major substantive flaw with the papers presented is the glossing over of the problems which will arise when the minerals prospecting, exploration, and exploitation become imminent -- as the claims to territorial rights in Antarctica by various "claimant states" (and revenues available) become more than juridical issues. As is obvious with the Falklands dispute between Argentina and United Kingdom, and the Beagle Channel dispute between Argentina and Chile, both national pride and economics prevent acceptance of adverse claims.

You may note that several states, including the United States, reject territorial claims (although the United States reserves right for later claims), but other states have often overlapping claims.

The Antarctic Treaty, with its emphasis on science and the environment, has worked so far, but may fall apart over this issue. Fears are rampant that, if the resources of the region become exploitable, or appear to be so, the LOS troops of the Third World will institute United Nations review. That's really the reason for trying to get this minerals regime into place as soon as possible.

NATIONAL SECURITY COUNCIL

CONFIDENTIAL

June 7, 1982

NOTE TO: MIKE UHLMANN, OPD
FROM: MIKE GUHIN ²
SUBJECT: Package on Antarctic
Mineral Resources Regime

I would appreciate comments/concurrence
in the attached package by close of
business tomorrow, June 8. Thank you.

Attachment
As stated

cc: Bill Barr

CONFIDENTIAL

DECLASSIFIED
Sec. 3.4(b), E.O. 12958, as amended
White House Guidelines, Sept. 11, 2008
BY NARA *dr*, DATE *12/11/2018*

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

DECLASSIFIED
Authority NSC Waver 8/6/10
BY dlz NARA DATE 12/11/2018

~~CONFIDENTIAL~~

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM P. CLARK

SUBJECT: Antarctic Mineral Resources Regime

Your February 5 decision on US Antarctic policy (Tab C) also directed a review of US positions for negotiations on a regime to govern Antarctic resource mineral development. In 1981 the parties to the Antarctic Treaty, including the US, called for the conclusion of such a regime. Initial negotiations begin June 14. We have already ratified the Antarctic living resources convention. An acceptable regime for mineral resources would also serve US political, security, economic, environmental, and scientific interests in Antarctica.

All the interested agencies concur in the review (Tab B) and the proposed US approach to the negotiations. In brief, we would envisage a regime that would (1) cover prospecting, exploration and development of resources in the Antarctic area; (2) be consistent with US positions on the status of Antarctica; (3) include assurances of non-discriminatory access for the US and its firms for development activities; (4) create the legal, financial and operational conditions necessary for mineral resource activities to take place on and a sound and economic basis; (5) ensure effective standards for safety and environmental protection; (6) provide for effective resource management; and (7) avoid the problems we have had with the UN Law of the Sea Treaty.

If you approve, I propose to inform the agencies that the proposed approach has been authorized for exploratory negotiations and that the possibility of alternative approaches later should not be excluded. OMB OSTP, and OPD concur.

RECOMMENDATION

That you approve the memo to agencies at Tab A.

Approve _____ Disapprove _____

Attachments

- Tab A Clark memo to agencies
- B Interagency report
- C President's memo of 2/5/82

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

DECLASSIFIED

Authority NSC Waiver 8/16/10

BY dlb NARA DATE 12/17/2018

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF COMMERCE
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR, ARMS CONTROL AND DISARMAMENT
AGENCY
DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY
POLICY
ADMINISTRATOR, ENVIRONMENTAL PROTECTION
AGENCY
DIRECTOR, NATIONAL SCIENCE FOUNDATION

SUBJECT: Negotiations on Antarctic Mineral Resources
Regime

The Antarctic Policy Group's report and proposed approach for the subject negotiations, as forwarded by the Department of State's memorandum of June 4, 1982, has been reviewed. The report's objectives for an Antarctic mineral resources regime have been noted.

Recognizing that development of an acceptable regime for mineral resources will serve United States political, security, economic, environmental and scientific interests in Antarctica, the United States should work for a regime that would:

- o Cover mineral resource prospecting, exploration and development on the Antarctic continent and its adjacent offshore areas;
- o Assure non-discriminatory access for the United States to all permitted mineral resource activities in Antarctica;
- o Create the legal, financial and operational conditions necessary for mineral resource activities to take place on a sound and economic basis;

CONFIDENTIAL

~~CONFIDENTIAL~~

- o Ensure that mineral resource activities take place in accordance with effective standards providing for operational safety and necessary levels of environmental protection;
- o Create a system for making decisions about possible mineral resource activities in Antarctica which will permit the United States to achieve its Antarctic mineral resource objectives; and
- o Provide for an effective resource management system.

In seeking these objectives, U.S. representatives in the negotiations will seek to ensure that provisions of an Antarctic mineral resources regime are consistent with the United States position of neither asserting nor recognizing claims to territorial sovereignty in Antarctica and with the principles and purposes of the Antarctic Treaty generally.

The U.S. delegation to the first round of negotiations in Wellington, beginning on June 14, is authorized to explore the approach to an Antarctic mineral resources regime as recommended by the Antarctic Policy Group. The delegation should pursue this approach on an ad referendum basis with the objective of determining its viability and without excluding alternative approaches in subsequent negotiations.

Following this round of negotiations, the Antarctic Policy Group should prepare proposed instructions and strategy for follow-on negotiations. These should be reviewed at the Senior Interagency Group level and include representatives of all interested agencies and the OMB, OPD and NSC staffs. Any differences should be forwarded for the President's consideration at least one month before follow-on negotiations take place.

FOR THE PRESIDENT:

William P. Clark

B.

DEPARTMENT OF STATE

Washington, D.C. 20520

June 4, 1982

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURES
dj 12/11/2018~~UNCLASSIFIED~~ - With Confidential AttachmentsMEMORANDUM FOR MR. WILLIAM P. CLARK
THE WHITE HOUSESubject: Antarctica - Antarctic Policy Group Recommendations
on a Regime for Antarctic Mineral Resources

There is enclosed for your consideration a detailed U.S. position and instructions for upcoming negotiations on a regime for Antarctic mineral resources. They have been prepared by the Antarctic Policy Group (APG) in response to the President's Directive on United States Antarctic Policy and Programs of February 5, 1982 and have been cleared by the Department of State, the Department of Defense, the National Science Foundation, the Department of the Treasury, the Department of Interior, the Department of Commerce, the Department of Transportation, the Department of Energy, the Office of Management and Budget, the Environmental Protection Agency, the Marine Mammal Commission, the Arms Control and Disarmament Agency and the Central Intelligence Agency.

Negotiations on a regime for Antarctic mineral resources will be initiated at a meeting of the fourteen Antarctic Treaty Consultative Parties in Wellington, New Zealand, June 14-25, 1982. The Wellington meeting takes place pursuant to the agreed recommendation of the Antarctic Treaty Consultative Parties, in July, 1981, which calls for conclusion of such a regime "as a matter of urgency." The regime is understood as an international system for determining the acceptability of mineral resource activities in Antarctica and governing those activities found to be acceptable.

In addressing general U.S. interests with regard to an Antarctic mineral resources regime, the APG concludes that development of an acceptable regime will serve not only U.S. resource interests, but also the full range of U.S. political, security, economic, environmental, and scientific interests in Antarctica. These interests were outlined in the Antarctic Policy Group

~~UNCLASSIFIED~~
With Confidential Attachments

UNCLASSIFIED

-2-

Study forwarded to the National Security Council on November 13, 1981. Within this framework the Antarctic Policy Group calls for negotiation of a regime applicable to mineral resource prospecting, exploration and development on the Antarctic continent and surrounding offshore areas. The regime would have to be consistent with the U.S. positions on the legal and political status of Antarctica. In addition, the regime would have to provide for specific U.S. resource and environmental objectives. Specifically, it should include:

- provision for assurance of non-discriminatory access for the U.S. and its firms to all areas of Antarctica in which mineral resource activities are determined acceptable;
- provision of a stable and predictable legal framework for governing mineral resource activities;
- provision of a system for defining rights to Antarctic mineral resources so as to provide the security of tenure necessary to create a stable and reasonable investment climate for the U.S. and its firms;
- provision for the establishment of reasonable terms and conditions to govern specific mineral resource activities;
- provision that decisions about possible activities be based upon information sufficient to judge the possible impacts of those activities;
- provision that activities not pose unacceptable risks to the Antarctic environment including large-scale irreversible changes in that environment and impacts upon living resource populations which would be inconsistent with the standards of the Convention on the Conservation of Antarctic Marine Living Resources; and
- provision that technology and procedures exist and be employed to ensure safe operations.

The APG further recommends that the U.S. delegation to the Wellington meeting be authorized to explore, on a "no-commitment", ad referendum basis, an approach designed to reflect the full range of U.S. objectives. This approach, provides for establishment of a commission; establishment of panels covering four regions into which Antarctica would be divided, with no more than one-half of the members of the Commission on each, and to

UNCLASSIFIED

With Confidential Attachments

UNCLASSIFIED

-3-

which the initiative for specific exploration/development decisions would be delegated; and establishment of a scientific and technical committee to advise the commission and the four regional panels. The approach would provide for the following type of decision process:

- prospecting: automatic authorization of any qualified applicant;
- opening of areas for exploration: by the commission with advice of the scientific and technical committee;
- exploration:
 - (a) opening of an area would activate the appropriate regional panel which would be required to establish operating terms and conditions for exploration and development within a fixed period of time;
 - (b) regional panel authorization of exploration and development by applicants, certified as qualified by the sponsoring state on the basis of financial terms and conditions agreed by the applicant and the panel within a reasonable period of time.

(The state sponsoring an applicant would participate on the panel if not otherwise a member of the panel);

- development: a qualified explorer could proceed to develop unless there is substantial change in planned production activities or unforeseen and unacceptable environmental hazards.

The approach does not explicitly address the voting procedures by which the commission would open an area or by which a regional panel would authorize exploration/development. For this approach to be acceptable to the U.S., there would have to be, at a minimum, provision that no single state could block decisions. Further, there would have to be requirements that these decisions be made within a reasonable period of time and on a reasonable basis. Commercial arbitration could be one useful means of achieving this objective.

~~UNCLASSIFIED~~

With Confidential Attachments

UNCLASSIFIED

-4-

The APG will review this approach in light of the results of the Wellington meeting to examine whether modifications or alterations to it are required to achieve U.S. interests. A number of agencies have stressed the need to avoid, at this point, excluding possible alternatives to the approach recommended for the Wellington meeting.

L. Paul Bremer, III
L. Paul Bremer, III
Executive Secretary

Attachment:

Antarctic Mineral Resources: U.S. Positions
for the Special Consultative Meeting in
Wellington, New Zealand, June 14-25, 1982.

UNCLASSIFIED
With Confidential Attachments

CONFIDENTIAL

'DECLASSIFIED'

Authority State Waiver 11/6/15
BY dlr NARA DATE 12/11/2018

ANTARCTIC MINERAL RESOURCES

U.S. Positions for the Special Consultative Meeting in
Wellington, New Zealand, June 14-25, 1982

BACKGROUND

The Government of New Zealand will host in Wellington a two-week Special Meeting of the Antarctic Treaty Consultative Parties to initiate the elaboration of a regime for Antarctic mineral resources. The Wellington meeting takes place pursuant to Recommendation XI-1 of the Eleventh Antarctic Treaty Consultative Meeting (held in Buenos Aires, June-July 1981) which, inter alia, calls for the adoption of a regime for Antarctic mineral resources "as a matter of urgency."

Recommendation XI-1 (attached at Tab A) reflects a commitment among the Antarctic Treaty Consultative Parties to engage in detailed negotiations on a regime. The meeting in Wellington, therefore, will represent a new stage in the consideration of the issue. During the discussion of the subject over the past six years, the Consultative Parties have spelled out a broad measure of agreement upon purposes, general principles and elements that should be included in a regime. At the Wellington meeting, the Consultative Parties will begin the process of translating these general principles and elements into a concrete and practical framework.

U.S. INTERESTS

The U.S. has specific interests in Antarctic mineral resources, interests which must be accommodated in the international regime for Antarctic mineral resources. In addition, the U.S. has political, security, scientific and environmental interests in Antarctica which directly relate to the mineral resource negotiations. Successful resolution of the Antarctic mineral resource issue is essential to the health and future functioning of the Antarctic Treaty system, including not only the Treaty, but also the system of agreed measures adopted pursuant to the Treaty and the recently concluded Convention on the Conservation of Antarctic Marine Living Resources. U.S. positions for the Wellington meeting must be based upon the full range of U.S. interests in Antarctica. (A summary of U.S. interests in Antarctica, drawn from the recent Antarctic Policy Group Report to the National Security Council is attached at Tab B.)

CONFIDENTIAL

Political and Security Interests: The U.S. has an important stake in the system of governance which has evolved within the Antarctic Treaty system. That system has reserved Antarctica exclusively for peaceful purposes and prevented it from becoming the scene of international conflict. At the same time, working within the Antarctic Treaty system, the U.S. has been able to protect its position on the political and legal status of Antarctica and, in fact, to assert a position of political leadership in Antarctica. The U.S., therefore, has an important interest in the continued effective functioning of the Antarctic Treaty system and in the resolution of the mineral resource issue in a manner consistent with this objective.

Mineral Resource Interests: The U.S. has defined its general interests in Antarctic mineral resources. These include promotion of increased knowledge of the non-living resource potential of Antarctica and of the environment in which such resources may be located; facilitation of the increase in the global supply of mineral resources, whose development in Antarctica proves to be acceptable, through definition of rights to Antarctic mineral resources and ensuring reasonable conditions of investment consistent with U.S. interests; and non-discriminatory access for itself and its firms to all areas of Antarctica in which mineral resource activities may be determined acceptable. In short, we seek a regime which will permit the U.S. and its firms to develop, on a sound economic basis, mineral resources in Antarctica whose exploitation can be undertaken in acceptable fashion.

Environmental and Scientific Interests: Two of the basic benefits of the Antarctic Treaty have been the freedom of scientific research including the international cooperation in scientific activities which has been fostered in Antarctica, and the commitment which has emerged to avoid harmful impacts of human activity on the Antarctic environment. Again the U.S. has been a leader in pursuing both of these objectives and has an interest in seeing them also reflected in the regime for Antarctic mineral resources. The regime, as we have defined it, would comprise a system for making decisions about the acceptability of mineral resource activities in Antarctica as well as for governing such activities determined to be acceptable. Therefore, the regime should provide adequate means for ensuring that the environmental effects of mineral resource activities are properly assessed and that no activities are permitted which would result in unacceptable environmental consequences. With regard to scientific research, the regime should in no way restrict the current freedom of scientific investigation in Antarctica and, in fact, should promote scientific activities as one of the important sources of data upon which to base sound decisions on mineral resource activities.

U.S. OBJECTIVES FOR THE REGIME

The acceptability of an eventual regime for Antarctic mineral resources must be judged in light of the full range of U.S. political, strategic, resource, environmental and scientific interests. The U.S. should, therefore, seek elaboration of a regime which is consistent with those interests, as outlined above and in Tab B. With this in mind, the U.S. delegation to the Wellington meeting should be guided by the specific objectives which follow.

General Nature of the Regime: There are a number of factors which influence the general nature of a regime for Antarctic mineral resources. First it is not possible at this point to judge what sorts of mineral resource activities, if any, may develop in Antarctica. Second, the regime must deal with the basic legal and political dispute in Antarctica regarding claims to territorial sovereignty in the area. Neither claimant nor non-claimant states are prepared to renounce their basic positions and thus the regime will not resolve the sovereignty issue in the sense of deciding upon the validity of claims to territorial sovereignty in Antarctica. The regime, therefore, must elaborate a system which can be viewed as consistent with both positions. Third, partially as a result of these legal and political differences, the regime must deal with all possible stages of mineral resource activities up through development and production, even though such activities may not take place, if ever, for at least several decades.

In light of these factors, the U.S. should seek elaboration of a regime which is as simple, pragmatic and flexible as possible. Specifically:

-- the regime should define the stages of mineral resource activity and identify the points at which "go/no-go" decisions should be made;

-- the regime should define the process by which these decisions about mineral resource activities are made, from the initial phases through development and production;

-- the regime should not attempt to incorporate specific regulations for any phase of mineral resource activity but should identify the process, standards and mechanisms for developing such regulations if and when necessary; and

-- the regime should provide for the minimum machinery to ensure its implementation, including provision for activation of machinery only if and when necessary.

CONFIDENTIAL

-4-

Territorial Claims: The U.S. does not recognize claims to territorial sovereignty in Antarctica nor, under the Antarctic Treaty, do we assert such claims ourselves. The U.S. does have a basis of claim to territorial sovereignty in Antarctica--a basis of claim which is protected by the Antarctic Treaty--but we are bound as a Party to the Treaty not to assert such claim so long as we are a Party. The Antarctic Treaty protects the U.S. position on the status of Antarctica, as it does the positions of those Parties who assert claims to territorial sovereignty.

A regime for Antarctic mineral resources--both in formal provision and in its substantive components--must be consistent with the U.S. position on the legal and political status of Antarctica. The U.S. is not prepared in a mineral resource regime to recognize the sovereignty asserted by any or all of the seven claimant states.

Area of Application: Recommendation XI-1 provides that the regime should "apply to all mineral resource activities taking place on the Antarctic continent and its adjacent off-shore areas, but without encroachment on the deep seabed." It adds that the precise limits of the area are to be determined during elaboration of the regime.

The U.S. should seek to include in the area of the regime's application the continent and surrounding offshore areas to the outer edge of the continental margin. The issue that will arise on this point relates to whether the outer edge of the continental margin is defined as everywhere at least 200 nautical miles from the coast and beyond 200 miles to the edge of the physical margin where it so extends, or whether the outer edge should be understood in geological terms only, in which case it would lie within 200 miles of the coast in many areas of Antarctica.

Ultimately, the U.S. can accept application of the regime out to 200 nautical miles from the coast or the outer edge of the physical margin, whichever is further. In practical terms, the best solution may simply be to define the area, when necessary, by use of geographic coordinates which would avoid disputes over the legal significance of using terms like "continental margin."

Activities to be Covered: As spelled out in Recommendation XI-1, the regime should apply to all mineral resource activities in the area covered by the regime. The delegation should work for the elaboration of a system that would cover all possible mineral resource activities whether onshore or offshore. At the same time, the U.S. can accept an emphasis upon offshore hydrocarbon activities in elaborating the regime, since these activities are considered to be the most likely to become feasible in the foreseeable future.

CONFIDENTIAL

As noted earlier, the regime should cover all stages of possible mineral resource activities, including prospecting, exploration and development. Prospecting would be defined to include mineral resource assessment activities of an environmentally benign character involving retention of proprietary data, but not involving exploratory drilling, surface or sub-surface excavation or activities associated with development. (In fact, prospecting activities would differ from scientific research currently permitted under the Antarctic Treaty only in that the Treaty's data sharing obligations would not apply.) For hydrocarbon activities, prospecting would include off-structure stratigraphic drilling, bottom sampling and coring. Exploration would be defined as mineral resource activities other than prospecting designed to locate specific resource deposits, including drilling and/or surface or sub-surface excavation but not involving pilot projects or commercial production. Development would be defined as commercial production activities and related activities, including any pilot projects, and support, processing, storage and transportation operations in the area covered by the regime. The regime should be so constructed that U.S. objectives are reflected at each of these stages.

The regime should not in any way affect the provisions of the Antarctic Treaty regarding scientific research. Within this framework, it should also include provisions to promote, stimulate and coordinate scientific activities necessary to generate the data base for making informed decisions about mineral resources.

Mineral Resource Objectives: A basic function of a regime for Antarctic mineral resources is to provide a system for making decisions about mineral resource activities in Antarctica. As noted earlier, it is our overall objective to facilitate an increase in the global supply of mineral resources whose development proves feasible and acceptable in Antarctica. To accomplish this objective the regime should incorporate general provisions and standards regarding access to and the conduct of mineral resource activities in Antarctica to ensure the U.S. the right and ability to engage in such activities, without artificial impediments. These provisions and standards would include:

- provision for non-discriminatory access for the U.S. and its firms to all areas of Antarctica in which mineral resource activities are determined acceptable;
- provision of a stable and predictable legal framework for governing mineral resource activities;

CONFIDENTIAL

-6-

- provision of a system for defining rights to Antarctic mineral resources so as to provide the security of tenure necessary to create a stable and reasonable investment climate for the U.S. and its firms;
- provision for the establishment of reasonable terms and conditions to govern specific mineral resource activities.

The application of these provisions and standards is, of course, inextricably linked to the decision-making process.

Environmental Objectives: It is our overall objective to ensure that any mineral resource activities in Antarctica are acceptable from an environmental perspective. Preventing the harmful impacts of human activities upon the Antarctic environment has been a joint commitment of the Antarctic Treaty Consultative Parties and forms one of the bases upon which they have agreed to develop a regime to govern mineral resource activity.

Therefore, the regime should incorporate general provisions and standards to ensure that possible mineral resource activities are acceptable to the U.S. from an environmental perspective. These would include:

- provision that decisions about possible activities be based upon information sufficient to judge the possible impacts of those activities;
- provision that activities not pose unacceptable risks to the Antarctic environment including large-scale irreversible changes in that environment and impacts upon living resource populations which would be inconsistent with the standards of the Convention on the Conservation of Antarctic Marine Living Resources;
- provision that technology and procedures exist and be employed to ensure safe operations.

The application of these provisions and standards is, of course, inextricably linked to the decision making process.

Decision-Making: The question of decision-making is an essential aspect of the regime. The U.S. objectives are to achieve sufficient assurance of positive decisions on proposed mineral resource activities by the U.S. or firms which it sponsors; sufficient protection against adverse decisions, including the imposition of arbitrary or capricious terms and conditions; and sufficient assurance that decisions will be made on a timely

CONFIDENTIAL

basis--that decisions cannot be unnecessarily delayed or deferred; and sufficient assurance of environmental protection. It is useful to consider decision-making from three inter-related perspectives: the stages in the resource management process, the actual system of taking decisions, and the nature of the political and economic accommodations required for decisions.

Decision-Making - The Resource Management Process: The regime should define the points in the resource management process at which decisions are required. There are four such points:

- conduct of prospecting;
- opening of areas for exploration;
- authorization of specific exploration activities;
and
- authorization of specific development activities.

The nature of the decisions required at each point will be discussed in the next section. The regime, however, should elaborate the standards upon which decisions at each of these stages should be based. The U.S. should seek inclusion in the regime of general standards incorporating those outlined in the preceding sections on mineral resource and environmental objectives.

The specific terms and conditions for mineral resource activities at each of its stages--prospecting, exploration and development--will result from application of the regime's standards to the proposed activities. Since we are not in a position to predict the nature of possible resource activities, the U.S. should resist any effort to include detailed terms and conditions or regulations in the regime itself. To do so would rob the regime of flexibility necessary to manage the various mineral resource activities which might emerge, as well as placing artificial constraints on those that do become feasible.

At the same time, as noted in the discussion of the general nature of the regime, the U.S. should ensure that the regime incorporates the process by which specific terms and conditions to regulate mineral resource activities can be accomplished in application of the regime's general standards.

Decision-Making - The System: In pursuing our objectives with regard to decision-making, it must be recognized, first, that possible mineral resource activities will be subject to collective decision or decisions by the participants in the regime; and second, that there will be a very strong, perhaps irresistible, sentiment to apply consensus to such decisions. (The Antarctic Treaty system has for the past twenty years operated upon the principle of consensus.)

There are two possible means of approaching the U.S. objective of ensuring necessary possible decisions, preventing adverse decision, and facilitating the taking of decisions when necessary: first, limiting the number of collective decisions required, and secondly, limiting the number of possible voices required for such decisions. The first point relates specifically to the stages in the resource management system at which a positive "go/no-go" decision would be required with regard to mineral resource activities. As indicated above, there are, at least, four such possible decision points:

- conduct of prospecting;
- opening of areas for exploration;
- specific applications for exploration; and
- specific applications for development.

In approaching these decision points, it should be recognized that requiring positive decisions at each point would tend to create greater uncertainties regarding stability of investment conditions and greater opportunity for political factors to enter the resource management process. On the other hand, limiting the number of such points at which a positive decision is required would tend to weaken the capacity to ensure observance of the regime's environmental and safety standards.

With regard to the number of positive voices required for necessary collective decisions there are several approaches: first, to require qualified majorities rather than consensus for such decisions; second, to de-centralize decision-making by according to limited numbers of participants in the regime the initiative for making these decisions; and, third, a combination of both.

Decision-Making - Political and Economic Accommodations:

Whatever the specific nature of the decision-making process, decisions to authorize mineral resource activities will require reasonable assurance that those activities conform to the regime's general standards. Equally important, such decisions will require political and economic accommodations among the participants in the regime, particularly between claimants and non-claimant states.

Claimant states will seek to deal with this latter aspect of decision-making by demanding that the regime include specific claimant state entitlements to resource activities themselves and to the the benefits of resource activities. We can expect a strong demand for claimant preferences in the allocation of sites--in the form of quotas or "anti-density" provisions; in the enforcement and administration of permitted mineral resource activities; and in the benefits from such activities.

The U.S. should strongly resist inclusion in the regime of entitlements in the form of preferences for claimant states (e.g., special rights to sites or revenues), quotas or other "anti-monopoly" provisions. Development of such formula would be very difficult to accomplish without prejudice to our legal and political position and would move the negotiation toward unproductive debate on the merits of participants' legal positions. More importantly, specific allocations of activities or benefits in the regime could place burdensome and arbitrary constraints upon future mineral resource activities should they become feasible. (As indicated earlier it would be very difficult to determine far in advance specific operational and financial terms and conditions which should apply to future activities.)

The U.S. should take the position that the accommodation of claimant and non-claimant state interests is best accomplished through the decision-making process itself. We have an interest in providing for potential U.S. operators the opportunity to negotiate the best terms and conditions possible for mineral resource activities within the framework of the regime's general standards. The U.S. should support, therefore, a decision-making process which permits the necessary political and economic accommodations to be made on a case-by-case basis, including possibilities for multiple licensing by sponsoring states, claimants or other participants in the regime, but without allocation or distribution of benefit formulas.

Machinery: The nature of the machinery necessary for the operation of the regime depends in significant degree upon the nature of the decision-making process itself. It is clear that the regime should provide a mechanism through which the basic decisions required to authorize mineral resource activities would be made. In addition, those decisions should be made on the basis of objective scientific and technical advice. Therefore, the regime should provide for a scientific and technical body to give expert and objective advice to the decision-making authority.

With regard to the decision-making mechanisms, there are several possibilities: establishment of a commission open to all full participants in the regime which would make all necessary collective decisions; de-centralization of the decision-making mechanism by limiting participation in necessary collective decisions; or a combination of both.

Participation in the Regime: One of the prerequisites of a regime for Antarctic mineral resources is that it achieve necessary international acceptance. It is a U.S. objective to ensure that Antarctica not become a scene of international discord or conflict and the regime for Antarctic mineral resources

not itself become a source of such discord or conflict. At the same time, the U.S. should strongly resist efforts to extend to Antarctica the concept (such as the common heritage concept) that the resources of Antarctica belong to the international community in some fashion and that the benefits of developing such resources should be directly shared with the international community.

The regime should recognize that members of the international community (other than Consultative Parties) have an interest in Antarctica and that other nations which are prepared to make the concrete commitment of resources necessary should not be barred from activities in Antarctica, including future mineral resource activities. An effort to construct the regime in such fashion as to exclude new entrants in principle would likely lead to efforts to destroy the regime from without.

Therefore, the question of participation in the regime is an important issue from the U.S. perspective, as it offers a vehicle for accommodating legitimate international community interests. Recommendation XI-1 reflects this principle in providing that the regime should include procedures for adherence by states other than the Consultative Parties, either through the Antarctic Treaty or otherwise.

In addressing this question at the Wellington meeting, the U.S. should draw a distinction between adherence to the regime and participation in its decision-making process--a distinction already contained in the Antarctic Treaty itself. Specifically, the U.S. should propose that participation in the decision-making process be limited to the Antarctic Treaty Consultative Parties, while adherence to the regime be open to all interested states. Adherence to the regime would qualify a state to apply or sponsor application for authorization to conduct mineral resource activities covered by the regime.

Relations with Other International Agreements: The regime, whatever its form, should be consistent with the basic provisions of the Antarctic Treaty, inter alia, its provisions relating to scientific research, the reservation of Antarctica exclusively for peaceful purposes, including its inspection procedures, and the political/legal accommodations reflected in the Treaty. In addition the regime should provide for establishment of cooperative relations with other international bodies which have competence for activities in the area to be covered by the regime. (An example would be the Intergovernmental Maritime Consultative Organization (IMCO) and its system of agreements designed to regulate vessel-source marine pollution.)

CONFIDENTIAL

-11-

Finally, the regime should provide specifically for consistency with the obligations and provisions of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). There obviously would need to be close cooperation between the machinery established pursuant to the mineral resource regime and that created under the CCAMLR.

Form of the Regime: Recommendation XI-1 identifies as an issue to be addressed while elaborating the regime determination of the form of the regime "including the question as to whether an international instrument such as a convention is necessary." The basic alternatives appear to be to incorporate the regime in a freestanding convention or in an instrument specifically dependent upon the Antarctic Treaty--either as some type of protocol to the Treaty or in an agreed recommendation pursuant to Article IX of the Treaty. The latter option would imply that the regime is a closed one in the sense of being limited to Antarctic Treaty Consultative Parties.

Other provisions of Recommendation XI-1 reflect a presumption that the regime will be a separate convention, and that appears to be the predominant view among the Consultative Parties. At the same time, there also appears to be widespread view that the question of form should be deferred until there has been concrete discussion of the nature of the regime itself. There is merit in this viewpoint and the U.S. should take the position that it is premature, at this point, to seek to decide the question of form. Priority should be accorded consideration of the practical operation of the regime, consideration which will permit more informed treatment of the issue.

OBJECTIVES FOR THE WELLINGTON MEETING

It is our goal to see the Wellington meeting engage in discussion of concrete proposals concerning the shape and components of a regime. To this end and in keeping with practice within the Antarctic Treaty system, the delegation should seek working methods which will permit informal, exploratory sessions in which the participants can discuss specific components of the regime in a frank and open fashion. We should seek to keep to a minimum formal negotiating sessions, stimulative of the recitation of national positions. It would be useful if the primary work of the meeting could be so organized as to permit participants to discuss and examine proposals on a "no-commitment" basis.

The type of informal negotiating process which the delegation should seek to stimulate at the Wellington meeting is necessary both to gain an understanding of the attitudes of the other Consultative Parties as well as to initiate innovative approaches

CONFIDENTIAL

to resolve mineral resource issues. To contribute to this process, the delegation should be prepared to set forth a concrete approach to a regime for Antarctic mineral resources. There is attached, therefore, an outline which the delegation should explore at the Wellington meeting. The outline may be tabled in whole or in part on an ad referendum, "no-commitment" basis.

INITIAL UNITED STATES APPROACH

The attached outline (Tab C) is designed to reflect the full range of U.S. interests in a regime for Antarctic mineral resources. It does not seek to identify and set forth positions on all of the issues inherent in a mineral resource regime. (One of the functions of the Wellington meeting is to gain a detailed understanding of the range of these issues.) What the outline does seek to do is to convey an idea as to how a regime might operate in practice. It rests upon the view that the essential accommodations among Parties to the negotiation will be made in elaborating the regime's decision-making process. The approach contained in the outline provides for establishment of a commission (of all participants entitled to take part in making decisions), establishment of panels covering four regions into which Antarctica would be divided, with no more than one-half of the members of the Commission on each, and to which the initiative for specific exploration/development decisions would be delegated; and establishment of a scientific and technical committee to provide advice to the commission and the four regional panels. The approach would provide for the following type of decision process:

- prospecting: automatic authorization of any qualified applicant;
- opening of areas for exploration: by the commission with advice of the scientific and technical committee;
- exploration:
 - (a) opening of an area would activate the appropriate regional panel which would be required to establish operating terms and conditions for exploration and development within a fixed period of time;
 - (b) regional panel authorization of exploration and development by applicants, certified as qualified by the sponsoring state on the basis of financial terms and conditions agreed by the applicant and the panel within a reasonable period of time.

CONFIDENTIAL

-13-

(The state sponsoring an applicant would participate on the panel if not otherwise a member of the panel);

- development: a qualified explorer could proceed to develop unless there is substantial change in planned production activities or unforeseen environmental hazards.

This approach seeks to balance the elements in the U.S. objectives for the decision-making process. It seeks to limit the number of collective decisions required in the resource management system and at the same time limit the number of positive voices required in those decisions. At the same time, the approach contained in the outline does not explicitly address the voting procedures by which the commission would open an area or by which a regional panel would authorize exploration/development. For this approach to be acceptable to the U.S., there would have to be provision that no single state could block decisions either at the stage of opening an area or at the stage of authorizing exploration/development. Further, there would have to be requirements that these decisions be made within a reasonable period of time and on a reasonable basis. Commercial arbitration could be one means of achieving this objective.

The Antarctic Policy Group (APG) also considered a system in which a commission decision would be required to open areas for exploration with negative consensus in regional panels required to deny an applicant sponsored by a Party to the regime from undertaking either exploration or development. This system could offer greater stability of expectation for potential U.S. operators. At the same time, such a system would create incentives for parties to sponsor applicants for political reasons to forestall activities by others. It would limit the regime's capacity to ensure that mineral resource activities conform to reasonable environmental standards. Finally, it would be very difficult to construct such a system involving greater automaticity without incorporating claimant state preferences or unacceptable formulas for the allocation of sites or other economic benefits.

On the other hand, the APG also considered a system in which separate positive decisions would be required at three stages: opening of areas, and development, as well as exploration. This system offers greater control within the resource management system in ensuring observance of environmental and operational standards. It is more consistent with the manner in which the United States and Western European nations manage frontier resource areas, such as their outer continental shelves. This system would add, however, an additional point at which uncertainties--both political and economic--could be introduced into the process.

CONFIDENTIAL

CONFIDENTIAL

-14-

On balance, the APG believes that the approach contained in the outline represents a better starting point than the other two alternatives. However, the other alternatives offer advantages which at this stage should not be discarded. It may well be that we will need to consider them in light of results of the Wellington meeting.

The most novel aspect of the approach contained in the attached outline is its provision for the establishment of regional panels. It is recognized that an effort to divide Antarctica into sub-regions and to provide limited participation in regional panels may well encounter formidable negotiating obstacles. At the same time this concept offers significant potential benefits. It recognizes that there are distinct resource regions within Antarctica which may be suited for management as distinct units. It would relate the establishment of machinery provided for in the regime to the actual areas of resource interest. More importantly, it would provide a forum in which the necessary political and economic accommodations, particularly among claimant and non-claimant states, could be more effectively brought about than in a more centralized process. By providing assurance to claimants and non-claimants alike of involvement in resource management decisions most directly affecting their interests, it would offer the greatest incentives for those decisions to be made on a timely and mutually acceptable basis.

As noted earlier, the authority request for the U.S. delegation to the Wellington meeting would be to explore the approach contained in the outline. The delegation should indicate that it is doing so on an ad referendum, "no-commitment" basis. Following the Wellington meeting we will analyze reactions to this approach with a view to determining what modifications or alternatives to it may be necessary to achieve U.S. interests.

The analysis which will be undertaken by the APG following the Wellington session will concentrate upon the decision-making system--particularly since only preliminary assessment of advantages and disadvantages for the U.S. can be made at this point in time. In addition, as pointed out earlier, the outline does not deal with all of the elements which may need to be incorporated in a regime. There are a variety of issues, including dispute settlement, the extent of state liability, the form of the regime, funding of the machinery to be established, the need for permanent staff or secretariat, and others, with which the APG will need to deal in light of the discussions in Wellington.

CONFIDENTIAL

CONFIDENTIAL

-15-

Attachments:

- Tab A - Recommendation XI-1 on Antarctic Mineral Resources
- Tab B - U.S. Interests in Antarctica
- Tab C - Draft Outline of a Regime for Antarctic Mineral Resources

CONFIDENTIAL

ANTARCTIC MINERAL RESOURCES

The Representatives,

RECALLING the provisions of the Antarctic Treaty, which established a regime for international cooperation in Antarctica, with the objective of ensuring that Antarctica should continue forever to be used exclusively for peaceful purposes and should not become the scene or object of international discord;

CONVINCED that the framework established by the Antarctic Treaty has proved effective in promoting international harmony in furtherance of the purpose and principles of the United Nations Charter, in prohibiting inter alia any measures of a military nature, in ensuring the protection of the Antarctic environment, in preventing any nuclear explosions and the disposal of any radioactive waste material in Antarctica, and in promoting freedom of scientific research in Antarctica, to the benefit of all mankind;

CONVINCED further of the necessity of maintaining the Antarctic Treaty in its entirety and believing that the early conclusion of a regime for Antarctic mineral resources would further strengthen the Antarctic Treaty framework;

DESIRING without prejudice to Article IV of the Antarctic Treaty to negotiate with the full participation of all the Consultative Parties to the Antarctic Treaty an appropriate set of rules for the exploration and exploitation of Antarctic mineral resources;

NOTING the unity between the continent of Antarctica and its adjacent offshore areas;

MINDFUL of the negotiations that are taking place in the Third United Nations Conference on the Law of the Sea;

REAFFIRMING their commitment to the early conclusion of a regime for Antarctic mineral resources which would take due account of the respective interests of the Consultative Parties as regards the form and content of the regime, including decision-making procedures, as well as the special characteristics of the Antarctic area;

RECALLING Recommendations VII-6, VIII-14, IX-1 and X-1;

RECALLING further Recommendations VI-4, VII-1, VIII-11, VIII-13, IX-5, IX-6 and X-7.

Recommend to their Governments that:

1. They take note of the progress made toward the timely adoption of a regime for Antarctic mineral resources at the Eleventh Consultative Meeting and related meetings and the importance of this progress.
2. A regime on Antarctic mineral resources should be concluded as a matter of urgency.
3. A Special Consultative Meeting should be convened in order:
 - a) to elaborate a regime;
 - b) to determine the form of the regime including the question as to whether an international instrument such as a convention is necessary;
 - c) to establish a schedule for negotiations, using informal meetings and sessions of the Special Consultative Meeting as appropriate; and
 - d) to take any other steps that may be necessary to facilitate the conclusion of the regime, including a decision as to the procedure for its adoption.
4. The Special Consultative Meeting should base its work on this Recommendation and the relevant Recommendations and Reports of the Eighth, Ninth and Tenth Antarctic Treaty Consultative Meetings.
5. The regime should be based on the following principles:
 - a) the Consultative Parties should continue to play an active and responsible role in dealing with the question of Antarctic mineral resources;
 - b) the Antarctic Treaty must be maintained in its entirety;
 - c) protection of the unique Antarctic environment and of its dependent ecosystems should be a basic consideration;

-3-

- d) the Consultative Parties, in dealing with the question of mineral resources in Antarctica, should not prejudice the interests of all mankind in Antarctica;
 - e) the provisions of Article IV of the Antarctic Treaty should not be affected by the regime. It should ensure that the principles embodied in Article IV are safeguarded in application to the area covered by the Antarctic Treaty.
6. Any agreement that may be reached on a regime for mineral exploration and exploitation in Antarctica elaborated by the Consultative Parties should be acceptable and be without prejudice to those States which have previously asserted rights of or claims to territorial sovereignty in Antarctica as well as to those States which neither recognize such rights of or claims to territorial sovereignty in Antarctica nor, under the provisions of the Antarctic Treaty, assert such rights or claims.
7. The regime should inter alia:
- I. Include means for:
 - a. assessing the possible impact of mineral resource activities on the Antarctic environment in order to provide for informed decision-making;
 - b. determining whether mineral resource activities will be acceptable;
 - c. governing the ecological, technological, political, legal and economic aspects of those activities in cases where they would be determined acceptable, including:
 - the establishment, as an important part of the regime, of rules relating to the protection of the Antarctic environment; and
 - the requirement that mineral resource activities undertaken pursuant to the regime be undertaken in compliance with such rules.
 - II. Include procedures for adherence by States other than the Consultative Parties, either through the Antarctic Treaty or otherwise, which would:

- a. ensure that the adhering State is bound by the basic provisions of the Antarctic Treaty, in particular Articles I, IV, V and VI, and by the relevant Recommendations adopted by the Consultative Parties; and
 - b. make entities of that State eligible to participate in mineral resource activities under the regime.
- III. Include provisions for cooperative arrangements between the regime and other relevant international organizations.
- IV. Apply to all mineral resource activities taking place on the Antarctic Continent and its adjacent offshore areas but without encroachment on the deep seabed. The precise limits of the area of application would be determined in the elaboration of the regime.
- V. Include provisions to ensure that the special responsibilities of the Consultative Parties in respect of the environment in the Antarctic Treaty area are protected, taking into account responsibilities which may be exercised in the area by other international organizations.
- VI. Cover commercial exploration (activities related to minerals involving, in general, retention of proprietary data and/or non-scientific exploratory drilling) and exploitation (commercial development and production).
- VII. Promote the conduct of research necessary to make environmental and resource management decisions which would be required.
8. They promote and cooperate in scientific investigations which would facilitate the effective operation of the regime taking into account, inter alia, the relevant parts of the Report of Ecological, Technological and Other Related Experts on Mineral Exploration and Exploitation in Antarctica (Washington, June 1979), attached as an annex to the Report of the Tenth Consultative Meeting.
9. With a view to improving predictions of the environmental impacts of activities, events and technologies associated with mineral resource exploration and exploitation should such occur, they continue with the assistance of the

Scientific Committee on Antarctic Research, to define programs with the objectives of:

- a. Retrieving and analyzing relevant information from past observations and research programs;
 - b. Ensuring in relation to the needs for information identified by the Experts Report, that effective use is made of existing programs;
 - c. Identifying and developing new programs that should have priority, taking account of the length of time required for results to become available.
10. In elaborating the regime, they take account of the provisions of Recommendation IX-1, paragraph 8.
-

U.S. INTERESTS IN ANTARCTICA

DECLASSIFIED

Authority State waiver 116/115
BY dr NARA DATE 12/11/2014Political and Security Interests

- Reservation of Antarctica for activities that serve peaceful purposes only;
- Prevention of Antarctica from becoming the scene or object of international discord;
- Continuation of the peaceful and cooperative relationships regarding Antarctica among those states active there;
- Continuation of the demilitarization and nuclear-free status of Antarctica, including the ban on testing of weapons and provision of full on-site inspection rights guaranteed by the Antarctic Treaty;
- Preservation of U.S. access to all areas of Antarctica and surrounding marine areas for peaceful purposes; and conversely, prevention of such access being denied the U.S. or its nationals on the basis of territorial claims or otherwise;
- Preservation of any basis for a U.S. claim to territorial sovereignty in Antarctica which existed prior to the entry into force of the Antarctic Treaty.

Environmental and Scientific Interests

- Protection and maintenance of the Antarctic environment, including the ecological systems of the continent and Southern Ocean;
- Increased understanding of the role natural processes in Antarctica play in phenomena of global significance, including biological, geological, geophysical, meteorological and oceanographic processes.
- Increased scientific understanding of global processes, the nature of which can be better understood as a result of evidence available in Antarctica, as for example, worldwide dispersal pattern of man-introduced pollutants and upper atmosphere physics;
- Increased baseline data and information on marine and terrestrial areas within the Antarctic Treaty area;

CONFIDENTIAL

-- Maintenance of the freedom of scientific research in Antarctica and the cooperative sharing of data gathered in accordance with the Antarctic Treaty.

Resource Interests

-- Increased knowledge of the populations of living resources in Antarctica and the ecological systems of which they are part;

-- Conservation of the living resources of Antarctica and of the Southern Ocean, including all species found there, ensuring the health of individual populations and the ecological systems of which they are a part;

-- Participation in the development and implementation of management mechanisms for conserving the living resources of Antarctica;

-- Provision of access for United States nationals to harvest living resources, in accordance with agreed conservation objectives and measures; should such harvesting interest develop;

-- Increased knowledge of the non-living resource potential of Antarctica and of the environment in which such resources may be located;

-- Ensuring that any mineral resource activities (exploration or development) are acceptable from an environmental perspective;

-- Facilitation of an increase in the global supply of such resources through:

(a) definition of rights to Antarctic mineral resources; and (b) ensuring reasonable conditions of investment consistent with U.S. interests.

-- Provision of non-discriminatory access for the U.S. to all areas of Antarctica in which mineral resource activities may be determined acceptable.

~~CONFIDENTIAL~~

Tab C

DRAFT OUTLINE OF A REGIME FOR
ANTARCTIC MINERAL RESOURCES

DECLASSIFIED

Authority State Waiver 11/6/15
BY do NARA DATE 12/11/2016

I. Purpose of the Regime

- A. The purpose of the regime would be to determine the acceptability of mineral resource activities in Antarctica and to govern any mineral resource activities determined to be acceptable.

II. Resources Covered by the Regime

- A. All non-living natural resources, including but not limited to fossil fuels, metals and non-metallic ores.

III. Activities Covered by the Regime

- A. Prospecting - mineral resource assessment activities, involving retention of proprietary data, but not including on-structure drilling, dredging or other surface or sub-surface excavation;
- B. Exploration - mineral resource activities other than prospecting designed to evaluate specific resource deposits, including on-structure drilling, dredging or surface or sub-surface excavation as needed for determination of the feasibility of development, but not involving pilot-project or commercial production;
- C. Development - commercial production activities and related activities, including pilot projects, and

~~CONFIDENTIAL~~

support, processing, storage and transportation operations in the area of application.

IV. Area of Application of the Regime

- A. The Antarctic continent and its adjacent offshore areas but without encroachment on the deep seabed.

V. General Obligations

- A. Each Party to the regime would be obligated to ensure that its nationals undertook no prospecting, exploration or development except as authorized in accordance with the provisions and purposes of the regime.
- B. Each Party to the regime would be obligated to ensure that any authorization it issued for activities permitted in accordance with the regime accorded with the specific terms and conditions for such activities as determined by the regime.
- C. Each Party to the regime would be bound to Articles IV and VI of the Antarctic Treaty, and would be obligated to observe as and when appropriate the Agreed Measures for the Conservation of Antarctic Fauna and Flora and such other measures as have been recommended by the Antarctic Treaty Consultative Parties for the protection of the Antarctic environment from harmful human interference.

VI. Commission

A. Membership. The regime would establish a Commission whose membership would include the Antarctic Treaty Consultative Parties.

B. Functions. The function of the Commission would be to oversee the operation of the regime's resource management system for determining the acceptability of mineral resource prospecting, exploration and development in Antarctica. To ensure realization of regime's standards of acceptability, the Commission would:

1. facilitate identification and conduct of studies needed to assess the possible first and second order effects of prospecting, exploration and development of various non-living resources;
2. compile data needed to predict and detect the possible direct and indirect effects of activities and events that could or would be associated with prospecting, exploration and development of mineral resource activities;
3. develop guidelines, procedures and criteria for the designation of protected areas;
4. develop guidelines and procedures for submission and review of proposals to open areas for mineral resource activities; and

5. develop guidelines, procedures and criteria for reviewing application for authorization to engage in mineral resource activities.

C. Meetings. The Commission would meet annually with provision for more frequent meetings as necessary.

VII. Regional Panels

- A. Divisions. The regime would establish regional panels for each of four divisions of Antarctica (see attached illustrative map).
- B. Each regional panel would be responsible for determining the acceptability of specific exploration and development activities in its area of responsibility. The panels would be responsible for establishing the specific terms and conditions for such activities in strict accordance with the standards of acceptability and other provisions of the regime.
- C. Membership. Members of the Commission would be eligible for membership on regional panels. No State could be a member of more than two panels and no panel would include over one-half plus one of Commission members. Membership on specific panels would be agreed upon by Commission members in parallel with the conclusion of the regime. In addition, any Party to the regime not a member of a Regional Panel, whether or not a member of the Commission, which sponsors an application before

that Panel would be entitled to participate will full voice on the Panel during its consideration of such application.

VIII. Scientific and Technical Committee

- A. Membership. The regime would establish a Scientific and Technical Committee whose membership would be open to all Parties to the regime.
- B. Functions. The functions of the Scientific and Technical Committee would be to make recommendations to the Regional Panels and the Commission on matters concerning their responsibilities. To this end, the Scientific and Technical Committee would provide a forum for consultation and cooperation concerning the collection, exchange, and evaluation of ecological, technical, and other information needed to assess and monitor the possible impacts of mineral resource activities on the Antarctic environment. The Committee would conduct such activities as the Commission may direct, including:
1. identifying the types of data which would be required and how those data should be collected, reported, archived and evaluated to determine when, where, and what activities would be "acceptable" according to the standards set forth in the regime;

2. evaluating the data provided to it and, based upon those evaluations, making recommendations as to:

a. geographic areas where available data are sufficient to conclude that exploration or development activities would pose no unacceptable risks;

b. general areas or specific sites where available data are sufficient to conclude that exploration, or development pose unacceptable risks;

c. any equipment restrictions, seasonal or area operating restrictions, monitoring programs, reporting requirements, or other stipulations that should be included as part of the terms and conditions of any activities authorized by regional panels;

3. identifying the general types of information which should be included in proposed exploration development plans and/or developing recommended guidelines for the preparation and review of proposed plans; and

4. reviewing proposed exploration and development plans.

C. Meetings. The Scientific and Technical Committee initially would meet at least once each year. In addition, there should be provisions for more frequent meetings and the possibility of a full-time structure.

IX. Designation of Protected Areas

A. The Scientific and Technical Committee should identify any areas considered to be of particular ecological sensitivity or significance in which prospecting, exploration and/or development should be prohibited indefinitely. The Scientific and Technical Committee would recommend protection of these areas to the Commission. Protection would be conferred or removed by decision of the Commission. Such areas, as appropriate, also would be notified to the Antarctic Treaty Consultative Parties for possible inclusion in the series of Specially Protected Areas pursuant to the Agreed Measures for the Conservation of Antarctic Fauna and Flora. However, conferral of continuing protection from mineral resources activity would not depend upon designation as Specially Protected Areas under the Agreed Measures.

X. Prospecting

- A. Where Authorized. Prospecting could take place after entry into force of the regime in any area not previously designated as a Specially Protected Area or Site of Special Scientific Interest under the Antarctic Treaty or designated as protected as provided for in paragraph IX.
- B. Applicants. A Party to the regime which itself intends or sponsors an entity which intends to engage in

prospecting shall notify the Commission of this intention. The sponsoring Party would be responsible for compliance with the terms and conditions which apply to prospecting.

C. Notification. Parties to the regime notifying the Commission of planned prospecting activities would be required to:

1. Identify the general area in which prospecting would occur;
2. Specify the anticipated duration of prospecting activities;
3. Outline the general nature of the prospecting;
4. Certify the qualifications of the operator;
5. Accept responsibility for ensuring compliance with the terms and conditions for prospecting.

D. Terms and Conditions.

In addition, to avoiding protected areas as described in paragraph A above, prospecting should comply with existing environmental standards developed pursuant to the Antarctic Treaty. Prospecting would not be subject to the data disclosure provisions for scientific research under the Antarctic Treaty and would confer no rights to resources.

E. Authorization.

No permit or license would be required under the regime, nor would the regime bar the issuance of permits by any Party to the regime.

XI. Opening of Areas for Exploration

- A. Identification of Areas. Any Party to the regime could request the Commission to open a general area for mineral resource exploration. The Party making such a request would be called upon to provide detailed information in support of its request, including such information generated by prospecting activities that it has sponsored. (There would be, however, no requirement that all of the results of prospecting be turned over.)
- B. Review of Areas. The Commission would be required to refer to the Scientific and Technical Committee any request to open an area for exploration including supporting information. The Scientific and Technical Committee would provide a detailed review of the request to the Commission including evaluation of the request in relation to the regime's standards of acceptability, and, if appropriate, recommended guidelines as to the operational terms and conditions which should be applied to exploration and development activities in the area concerned.
- C. Opening of Areas. On the basis of the review by the Scientific and Technical Committee, the Commission would determine whether or not to open any, part or all of the area to exploration, in accordance with the regime's standards of acceptability.

XII. Exploration

- A. Activation of Regional Panels: Opening of an area for exploration by the Commission would automatically trigger the establishment of the regional panel responsible for the area concerned.
- B. Operational Terms and Conditions: After establishment of the appropriate regional panel, the panel would establish, within a fixed period of time, specific operational terms and conditions for exploration and development activities in the area concerned. These terms and conditions would be based upon the recommendations of the Scientific and Technical Committee, including any guidelines suggested when opening the area. Such terms and conditions would include provisions relating to:

- observance of the regime's standards of acceptability;
- block size;
- diligence;
- data collection and reporting;
- monitoring;
- maintenance of emergency response capability (to deal with accidents or other unforeseen problems);
- suspension, modification or cancellation of authorizations in the event of newly identified risks or failure to comply with the terms and conditions of the authorization; and
- liability (including bonding).

C. Applications to Explore: After establishment of the operational terms and conditions by the regional panel, any Party to the regime would be entitled to submit application for exploration authorization, either on its own behalf or on behalf of an entity it sponsors. An applicant would be considered as qualified if the sponsoring state submits on its behalf:

1. a description of the proposed operating entity, including economic participation therein;
2. a detailed description of the proposed exploration activities and proposed production activities, should exploration prove successful;
3. a certification by the sponsoring state of the general technical and financial competence of the operator;
4. a certification by the sponsoring state of the capacity of the operator to comply with the operating terms and conditions established by the regional panel; and
5. a commitment by the sponsoring state to ensure compliance with the terms and conditions of the exploration authorization.

E. Financial Terms and Conditions: For each qualified applicant, the financial terms and conditions for exploration and development would be determined by agreement between the applicant and the Panel within a reasonable period of time.

F. Authorization: The sponsoring state would license an authorization to explore. The authorization would include the financial terms and conditions as agreed by

applicant and the Panel, as well as the specific operating terms and conditions. The regional panel could provide for licensing by states other than the sponsoring state, provided that issuance of additional licenses would not be a condition of initiating the exploration/development activities.

- G. Rights of the Explorer: An operator authorized to explore by the Regional Panel would enjoy exclusive rights to explore in the block or blocks concerned, as well as rights to future development.

XIII. Development

- A. Application to Develop. Upon completion of exploration, an approved explorer would notify the regional panel of its intention to proceed to development. In this regard, the notification would include:

- an updated description of the proposed operating entity, including economic participation therein;
- an updated description of the planned production activities (originally provided at the exploration phase) to indicate any modifications in those activities and a review of the applicability of the regime's standards of acceptability;
- certification by the sponsoring state of the financial and technical competence of the operator, including capacity to comply with the operating terms and conditions; and
- commitment by the sponsoring state to ensure compliance with the terms and conditions for the development stage.

~~CONFIDENTIAL~~

- B. Review by the Scientific and Technical Committee: The Regional Panel would be required to refer such notifications to the Scientific and Technical Committee for review, such review to be completed within a fixed period of time.
- C. Development: The approved explorer could proceed with development activities unless the review of the Scientific and Technical Committee revealed:
1. significant modification in proposed production activities; or
 2. significant unforeseen environmental hazards.

XIV. Standards of Acceptability

- A. Sufficiency of Information: Sufficiency of information on:
1. the general biology, ecology, and demography of living resources;
 2. the nature and location of unique biological communities and sites of special scientific, historic, or aesthetic importance;
 3. the possible geological and climatic (weather) hazards; and
 4. the likely effects of disturbance, environmental contamination, etc. that would or could be associated with proposed activities.

~~CONFIDENTIAL~~

B. Environmental Protection:

1. no significant or irreversible changes in the distribution, abundance, or productivity of living resources;
2. no threat to endangered, threatened, or depleted species or populations of living resources;
3. no threat to unique biological communities or areas (sites) of special biological, scientific, historic, or aesthetic importance;
4. no adverse effect on global climate or weather patterns; and
5. no threat of any but local effects on air or water quality.

C. Operational and Safety Standards:

1. Existence and application of technology and procedures to ensure safe operations and observance of the environmental protection standards.
2. Evidence of:
 - (a) adequate plans for monitoring key system components and/or environmental parameters; and
 - (b) adequate contingency plans and equipment for dealing with accidents (e.g., oil spills).

~~CONFIDENTIAL~~

- D. Non-Discrimination: Decisions on whether to authorize, modify, suspend or cancel mineral resource activities would be based solely on the provisions of the regime without discrimination as between Parties to the regime on any other grounds.

XV. Distribution of Revenues

- A. A fixed percentage of revenues accruing to the regional panels from exploration and development would be assigned to the Commission for support of its activities and the activities of the Scientific and Technical Committee.
- B. The remainder of revenues would be applied by regional panels to defray their costs of operation and for such other uses as the panels deem appropriate.

XVI. Participation

- A. In the mineral resource activities pursuant to the regime:
1. Any state interested in Antarctic mineral resources may adhere to the regime and sponsor applications for activities covered by the regime.
- B. In the Regime's Decision-Making System:
1. The Antarctic Treaty Consultative Parties.

~~CONFIDENTIAL~~

XVII. Relationship with Other International Agreements and Organizations

- A. Consistency with the Antarctic Treaty and the Convention on the Conservation of Antarctic Marine Living Resources.
- B. Participation by other competent international organizations as observers in the regular meetings of the Parties and in the work of the Scientific and Technical Committee.

5/14/82

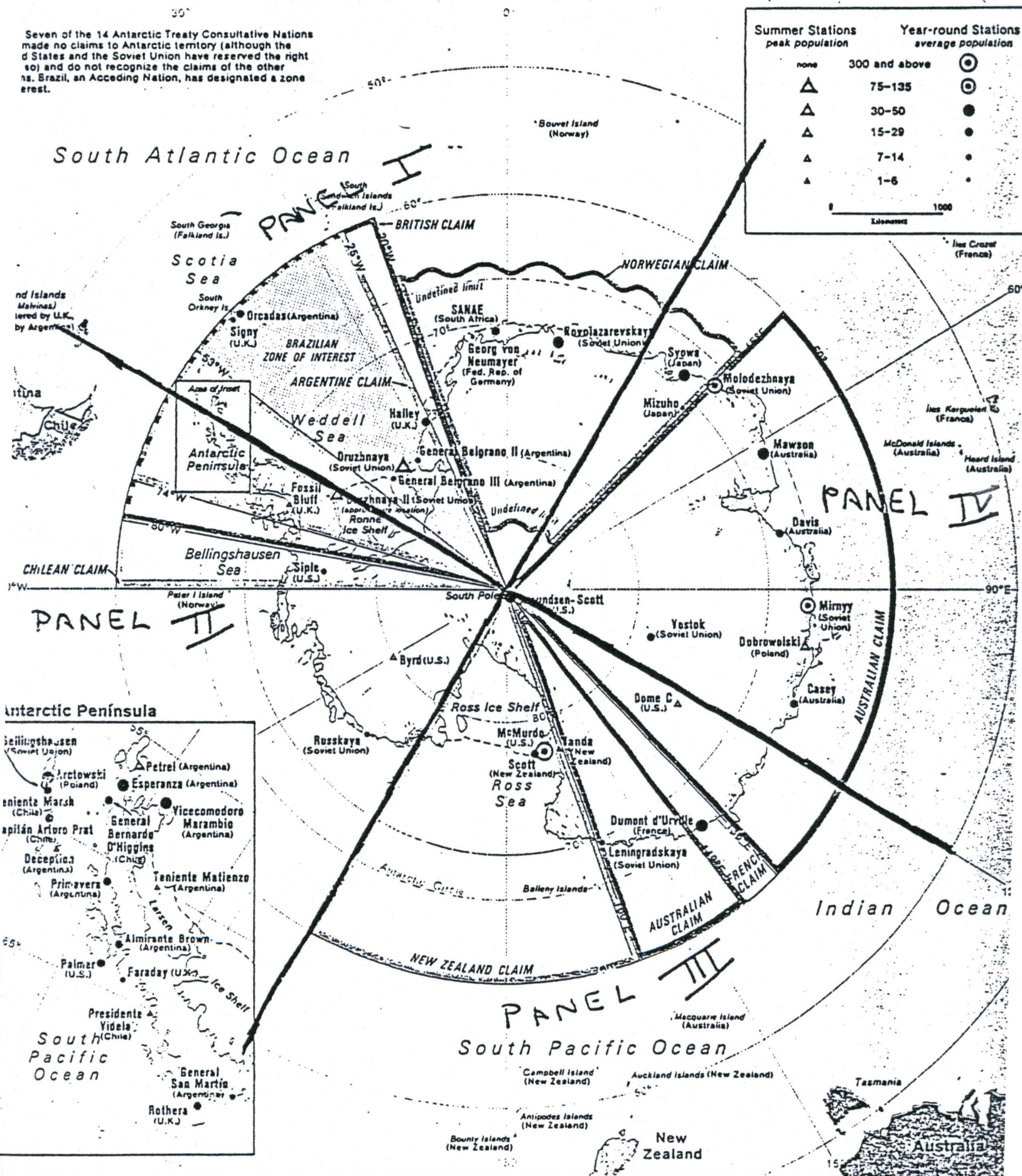
~~CONFIDENTIAL~~

ANTARCTICA: Stations and Claims

Seven of the 14 Antarctic Treaty Consultative Nations made no claims to Antarctic territory (although the United States and the Soviet Union have reserved the right to do so) and do not recognize the claims of the other nations. Brazil, an Acceding Nation, has designated a zone of interest.

Summer Stations peak population		Year-round Stations average population
none	300 and above	⊙
△	75-135	⊙
△	30-50	●
△	15-29	●
△	7-14	●
△	1-6	●

0 1000 Kilometers



100

C.

THE WHITE HOUSE
WASHINGTON

February 5, 1982

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF COMMERCE
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR, ARMS CONTROL AND DISARMAMENT
AGENCY
DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY
POLICY
ADMINISTRATOR, ENVIRONMENTAL PROTECTION
AGENCY
DIRECTOR, NATIONAL SCIENCE FOUNDATION

SUBJECT: United States Antarctic Policy and Programs

I have reviewed the Antarctic Policy Group's study of United States interests in Antarctica and related policy and program considerations, as forwarded by the Department of State on November 13, 1981, and have decided that:

- o The United States Antarctic Program shall be maintained at a level providing an active and influential presence in Antarctica designed to support the range of U.S. Antarctic interests.
- o This presence shall include the conduct of scientific activities in major disciplines; year-round occupation of the South Pole and two coastal stations; and availability of related necessary logistics support.
- o Every effort shall be made to manage the program in a manner that maximizes cost effectiveness and return on investment.

I have also decided that the National Science Foundation shall continue to:

- o budget for and manage the entire United States national program in Antarctica, including logistic support activities so that the program may be managed as a single package;

fund university research and federal agency programs related to Antarctica;

draw upon logistic support capabilities of government agencies on a cost reimbursable basis; and

-) use commercial support and management facilities where these are determined to be cost effective and will not, in the view of the Group, be detrimental to the national interest.

Other agencies may, however, fund and undertake directed short-term programs of scientific activity related to Antarctica upon the recommendation of the Antarctic Policy Group and subject to the budgetary review process. Such activities shall be coordinated within the framework of the National Science Foundation logistics support.

The expenditures and commitment of resources necessary to maintain an active and influential presence in Antarctica, including the scientific activities and stations in the Antarctic, shall be reviewed and determined as part of the normal budget process. To ensure that the United States Antarctic program is not funded at the expense of other National Science Foundation programs, the OMB will provide specific budgetary guidance for the Antarctic program.

To ensure that the United States has the necessary flexibility and operational reach in the area, the Departments of Defense and Transportation shall continue to provide, on a reimbursable basis, the logistic support requested by the National Science Foundation and to develop, in collaboration with the Foundation, logistic arrangements and cost structure required for effective and responsive program support at minimum cost.

With respect to the upcoming negotiations on a regime covering Antarctic mineral resources, the Antarctic Policy Group shall prepare a detailed U.S. position and instructions. These should be forwarded for my consideration by May 15, 1982.

Ronald Reagan